

- (1) The claimant, Bobby Hester, injured his right arm and shoulder on September 15, 1999, while working for Russell Stover Candies. After the incident,

Mr. Hester reported the accident and was taken to the company nurses' office to make a report and fill out the required paperwork.

(2) That same day Mr. Hester was taken to the hospital emergency room for treatment and x-rays. Pain medication was prescribed.

(3) Thereafter, Mr. Hester's treatment was provided by the company physician, Dr. Christopher R. Wilson, who placed claimant's right arm in a sling and recommended light duty restrictions. Dr. Wilson determined surgery would likely be necessary and referred Mr. Hester to orthopedic surgeon, John Yost, M.D., but because Dr. Wilson related the condition to the 1995 injury, The Hartford's insurance adjuster would not authorize this referral and canceled the claimant's appointment with Dr. Yost.

(4) Because he had ongoing symptoms, Mr. Hester was sent by his attorney to orthopedic surgeon Edward J. Prostic, M.D.

(5) On October 25, 1999, Dr. Prostic wrote a letter indicating Mr. Hester had suffered a work-related injury and recommended a shoulder stabilization arthroplasty. Thereafter, The Hartford also obtained an IME from an orthopedic surgeon. Dr. Roger W. Hood wrote in his February 8, 2000 report that the work at Russell Stovers did not cause or worsen Mr. Hester's preexisting condition.

(6) In May of 1995 claimant dislocated his right shoulder when he slipped on a wet floor and fell, landing on his elbow. He was treated at a hospital emergency room and received conservative follow-up care from orthopaedic surgeon Dr. Phillip L. Baker. He was released to regular duty on June 20, 1995 and thereafter received no further treatment for that injury. While working at a McDonald's Restaurant on August 30, 1998, claimant's shoulder popped out of place as he came back down after jumping up and grabbing an object above his head. He was seen twice by an orthopedic surgeon, Dr. Richard G. Wendt, who treated and released him with the admonition that if this problem persisted, eventually surgery may be required. Thereafter, claimant's condition again improved. He worked for respondent from December 1998 until September 15, 1999 without incident.

(7) The Appeals Board finds that Mr. Hester's present need for medical treatment is directly related to the September 15, 1999 incident at work.

#### Conclusions of Law

(1) An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not

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<sup>1</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.<sup>2</sup>

(2) After observing Mr. Hester testify, Judge Avery found his testimony credible and found that Mr. Hester's work activities, at the very least, aggravated his upper extremity and shoulder condition. Considering both Mr. Hester's testimony and the medical records in evidence, the Appeals Board agrees. Therefore, the Appeals Board affirms the finding that Mr. Hester sustained personal injury by accident arising out of and in the course of his employment with respondent.

(3) As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the Order for Medical Treatment dated May 3, 2000, entered by Administrative Law Judge Brad E. Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

c: William L. Phalen, Pittsburg, KS  
Brenden W. Webb, Overland Park, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

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<sup>2</sup> Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> K.S.A. 1999 Supp. 44-534a(a)(2).